

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1199 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KOTECHA BROTHERS

Versus

BILESHWAR KHAND UDYOG

Appearance:

Ms.Paurami Sheth for
MR BR SHAH for appellant
Mr.Saurabh Amin for
MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is the plaintiff's First Appeal against the Judgment and decree dated 31.12.1979 passed by the Civil Judge (S.D.), Jamnagar in Civil Suit No.82/74 whereby the

plaintiff's Suit was dismissed.

2. Hereinafter in this judgment the present appellant will be referred to as 'the Plaintiff' and the respondent as 'the defendant'. The defendant is a Co-operative Society carrying on business of manufacture and sale of sugar. This Co-operative Society is actually named as Shri Bileshwar Khand Udyog Khedut Sahakari Mandli Ltd. This defendant Society entered into a contract for purchasing 13 Twill 106 bales from the Plaintiff at the rate of Rs.515/- per 100 gunny bags, one bale containing 300 Nos. of gunny bags. According to the plaintiff, the defendant Society took delivery of 30 bales in truck and out of Rs.46,409/-, Rs.42,200/- had paid paid by defendant on 8.4.74. Thereafter, another consignment was sent to the defendant - Society of 35 bales in the truck and against a sum of Rs.54,133/- the defendant paid Rs.57,000/- on 10.4.74 towards the account (Khata) maintained by the plaintiff in regular course of business and 41 bales out of 106 bales remained to be taken delivery by the defendant. The plaintiff informed the defendant telegraphically that the remaining bales were despatched and the defendant was asked to send a sum of Rs.12,500/-- by telegraphic transfer. The defendant replied by telegram for balance "Await our Truck. Do not despatch- Khand Udyog." The plaintiff waited and received a telegram from the defendant that Twill not upto mark for despatch, await for instructions. Thus, there was some dispute between the parties about the quality of the Twill and this dispute resulted into the question about the payment of Rs.12,725/-. For recovery of this amount of Rs.12,725/- the plaintiff filed the present Suit in the Court of Civil Judge (S.D.), Jamnagar being Civil Suit No.82/74. The defendant filed written statement resisting the Suit and traversing the claim of the plaintiff on several grounds including the ground that the Civil Court had no jurisdiction to try the suit in view of the provisions contained in S.96 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act') and also that the Suit had been filed against the Co-operative Society without giving any notice as required under S.167 of the Act and was, therefore, liable to be dismissed.

3. On the basis of the pleadings of the parties, the trial court framed as many as 13 issues including issue No.6 as to whether the Civil Court had the jurisdiction to try the suit and issue No.7 as to whether the notice to defendant under the Act was mandatory. So far as issue No.6 is concerned, the trial court has decided this issue in favour of the plaintiff and has held that the

Court had the jurisdiction to try the suit, but issue No.7 was decided against the plaintiff and it was held that the giving of the notice under S.167 of the Act was mandatory and whereas the Suit had been filed without giving any such notice under S.167 of the Act, the Suit was required to be dismissed and accordingly the Suit was dismissed.

4. For the purpose of deciding this Appeal, it is not necessary for this Court to enter into the findings arrived at by the trial court on issue No.6 because that issue has been decided in favour of present appellant i.e. plaintiff and this Appeal can be decided with reference to finding on issue No.7 only as would be clear from this judgment hereinafter.

5. S.167 of the Gujarat Co-operative Societies Act, 1961 is reproduced as under:-

"167. Notice necessary in suits.-- Save as otherwise provided in this Act, no suit shall be instituted against a society, or any, of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left."

6. Learned counsel for the appellant has argued that the transaction in question cannot be said to be a transaction touching the business of the Co-operative Society and, therefore, requirement of giving notice under S.167 of the Act was not at all necessary before filing the Suit and the trial Court has erred in holding that giving of such notice was mandatory. In support of her submission, learned counsel has placed reliance on a decision of the Supreme Court in the case of U.P. Co-operative Cane Union Federation Ltd. v. Liladhar, reported in AIR 1981 SC 152. In this decision, the Supreme Court considered its earlier decision in the case of Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain, reported in AIR 1969 SC 1320, which was a case under the Maharashtra Co-operative Societies Act, 1968. After analysing Sec.91 of the aforesaid Act (Maharashtra), it was found that out of 5 types of disputes enumerated in sub-section (1) of Sec.91, 5th one was the dispute touching the business of a society and the word "business" occurring in

sub-section (1) of Sec.91 was found to have been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws. On the basis of this analysis, the Court held that the dispute between a tenant of a member of the Bank in a building, which had been subsequently acquired by the Bank could not be said to be a dispute touching the business of the Bank. The Supreme Court after taking note of what has been held by the Supreme Court in Deccan Merchants Co-operative Bank Ltd. (Supra) also made reference to the case of Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal, Andhra Pradesh, reported in AIR 1970 SC 245 and considered the question which was posed as to whether the dispute between the Co-operative Society and the employee touches the business of the society in the sense explained by the Supreme Court in that case and also noted that the Court had answered the contention to the effect that business is equated with the actual trading or commercial or other similar business activity of the society and whereas it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. On the basis of the decisions, as aforesaid, in the case of U.P. Co-operative Cane Union Fedn. (Supra) it was held by the Supreme Court that a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of the society cannot be held to be a dispute touching the business of the society. In my opinion, this decision is of no help to the present appellant in the facts of this case for the simple reason that the touch stone, which is to be applied in such cases to find out as to whether the dispute touches the business of the Society or not, is the actual trading or commercial or other similar business activity of the Society and the word 'business' is to be equated with the three terms as aforesaid i.e. trading or commercial or other similar business activities. Everything which a Society does may not touch the business of the society and, therefore, it is certain that for the purpose of bringing any particular act or omission or transaction within the meaning of the term, "touching the business" the test to be applied is the activity related to actual trading or its commercial activity or other business activity, which

may be akin to the trading or commercial activity. If that is the test to be applied, as has been laid down by the Supreme Court, in the facts of the present case when defendant Society was a Society dealing in Khand Udyog that is apparent by the very nomenclature, it certainly entered into the transaction with the plaintiff in relation to its trading and business activity when it entered into an agreement for purchase of gunny bags which were required for such business authorised under the Act, Rules and its bye-laws. The contract between the plaintiff and the defendant was with regard to the purchase of the gunny bags to be used as container for the sugar, which was manufactured by the Society. It is not in dispute that the defendant Society is a Society, which was engaged in the business of manufacturing and marketing of sugar. Naturally if the Society is engaged in the business of manufacturing and marketing of sugar, it would certainly require gunny bags as containers of such sugar for marketing of its stock. It was, therefore, directly a business activity relating to trade of the sugar and the contract was entered into for such purpose, which clearly was a business purpose and, therefore, it was certainly a dispute touching the business of the defendant Co-operative Society. Yet another decision on which reliance was placed by the learned counsel for the appellant (plaintiff) is the case of Shankerbag Co-operative Housing Society Ltd. v. Kumari Sarojben Maganbhai, reported in 1991(1) GLH 279. In this case, a single Bench of this Court dealt with a case of a defendant - Co-operative Society, which was a Co-operative Housing Society and it was found that taking loans or accepting deposits from non-members can hardly be said to be a dispute touching the business of the Society and, therefore, the business of the Society being housing and not taking loan or accepting deposits, it was found that the transaction in question i.e. taking loan or accepting deposits from non-members was not an activity relating to the business of the society. In this case of Shankerbag Co-operative Housing Society (Supra) the Court had also considered the law as was laid down by the Supreme Court in the case of U.P.Co-operative Cane Union Federation Ltd. (Supra) and Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal, A.P., Hyderabad, (Surpa), as decided by the Supreme Court, and I find that even this decision does not render any help to the appellant-plaintiff and, therefore, it is not possible for this Court to accept the contention, as has been raised by the learned counsel for the appellant that the giving of the notice under S.167 of the Act was not necessary.

7. On the other hand, learned counsel Mr.Amin appearing for the defendant - Society has invited the attention of this Court to a decision of this Court in the case of Anjar Municipality v. Anjar Taluka Co-operative Sales Purchase Union, reported in 1993 (2) GLR 1551 wherein this Court held that if no notice is served as required under S.167 of the Gujarat Co-operative Societies Act, the paramount object underlying it will be frustrated and in taking this view, the earlier decision rendered by the Division Bench in the case of M.G.Patel & Co. v. Alka Co-operative Society, reported in 1980(2) GLR 498 was also relied upon.

8. In the facts of the present case, it is not in dispute that no notice under S.167 of the Act was given before filing the Suit. It is obvious from the plain reading of S.167 itself that in case the dispute in question touches the business of the Society, notice under S.167 is a must. In fact, the provisions of Sec.167 of the Act are akin to the requirement of giving a notice under S.80 of C.P.C. in case Suits are required to be filed against the Government and its functionaries and it goes without saying that giving of such a notice under S.167 of the Act is a pre-requisite or a condition precedent for the purpose of filing the Suit against the Co-operative Society in case the dispute touches the business of the Society. In fact, I find that according to the language of Sec.167, which speaks of the dispute touching the business, it is not necessary that the dispute must be something directly across the business. Even if the dispute touches the business tangentially it would come within the mischief of Sec.167 of the Act. If we assume the "business of the society" to be a Circle and the "dispute" simply touches the circumference of such a Circle and its fringes, it would be a dispute touching the business of the Society. In the facts of the present case, I find that the dispute arising out of the transaction for the purchase of the gunny bags required for the marketing of the stock of sugar manufactured by the Co-operative Society, is a dispute which is fully covered by the expression 'touching the business of the society' and the requirement of giving the notice under S.167 for such a dispute to recover an amount against the contract with regard to the supply and purchase of such gunny bags, was directly a contract relating to the business and trading activity of the defendant - Shri Bileshwar Khand Udyog Khedut Sahakari Mandli Ltd. and the trial court has rightly held that the Suit was not maintainable in absence of such a notice and, therefore, I find that the Suit has been rightly

dismissed. The impugned judgment and decree does not suffer from any infirmity of fact or law.

9. There is no force in this Appeal. The same is hereby dismissed. In the facts of this case, the parties are left to bear their own costs.

(M.R.Calla,J)